

E-Filed 7/20/12

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA
SAN FRANCISCO DIVISION

ALEXANDER BALBUENA,

No. C 11-0228 RS (PR)

Petitioner,

**ORDER DENYING MOTION TO
PROCEED IN FORMA PAUPERIS ON
APPEAL**

v.

MARTIN BITER,

Respondent.

This closed federal habeas corpus action, which is currently on appeal, was filed pursuant to 28 U.S.C. § 2254 by a *pro se* state prisoner. The Court denied the petition, entered judgment in favor of respondent, and declined to issue a certificate of appealability on May 25, 2012.

Petitioner asks that his *in forma pauperis* (“IFP”) status should continue for his appeal (Docket No. 22). This Court determines that it should not. The Court certifies that any appeal taken from the order of dismissal and judgment of this action will not be taken in good faith and is therefore frivolous because there are no valid grounds on which to base an appeal. Fed. R. App. P. (“FRAP”) 24(a)(3)(A); *Ellis v. United States*, 356 U.S. 674, 674–75 (1958); *Hooker v. American Airlines*, 302 F.3d 1091, 1092 (9th Cir. 2002). The Clerk shall

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1 forthwith notify plaintiff and the Court of Appeals of this order. *See* FRAP 24(a)(4).
2 Plaintiff may file a motion for leave to proceed IFP on appeal in the Court of Appeals within
3 thirty days after service of notice of this order. *See* FRAP 24(a)(5). Any such motion “must
4 include a copy of the affidavit filed in the district court and the district court’s statement of
5 reasons for its action.” *Id.*

6 **IT IS SO ORDERED.**

7 DATED: July 20, 2012


RICHARD SEEBORG
United States District Judge